
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Peninsula Communications Inc.)	File No: EB-FIELDWR-12-00002823
Licensee of FM Broadcast Station KPEN)	
Facility ID 52149)	NOV No: V201232780008
Soldotna, Alaska)	
)	

NOTICE OF VIOLATION

Released: July 24, 2012

By the Resident Agent, Anchorage, Western Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's Rules,¹ to Peninsula Communications Inc. licensee of FM broadcast station KPEN in Soldotna, Alaska. This Notice may be combined with a further action, if further action is warranted.²

2. On April 26, 2012 agents of the Enforcement Bureau's Anchorage Office inspected the FM broadcast radio station at its main studio at 37840 K-Beach Rd, Kenai, Alaska and observed the following violations:

- a. 47 C.F.R. § 11.35(a): "EAS Participants must determine the cause of any failure to receive the required tests or activations specified in §§ 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§ 73.1820 and 73.1840 of this chapter for all broadcast streams." KPEN advised the agents that the station was monitoring KTUU as the second monitoring source. The agents reviewed station logs for the weeks between February 19, 2012 and April 28, 2012, and found no entries explaining why KPEN had failed to receive the required weekly tests (RWTs) from KTUU for the weeks of February 19, March 4, March 11, April 8, April 15, and April 22, 2012. Agents also found no entries for the weeks of February 26 and March 4, 2012, explaining the reason(s) for the failure to receive RWTs from the National Weather Service (NWS). Additionally, on April 4, 2012, a handwritten note in the EAS log indicated that KPEN received the required monthly test (RMT) from KTUU at 11:21 a.m.; however, there is no indication or documentation that KPEN transmitted the RMT as required.

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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- b. 47 C.F.R. § 11.52(d): “EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.” At the time of the inspection, KPEN was monitoring sources did not comply with the State EAS Plan or a Waiver granted to KPEN.
- c. 47 C.F.R. § 73.1226(a): “Station records and logs shall be made available for inspection or duplication at the request of the FCC or its representative.” At the time of the inspection, the station’s logs were not readily available when requested. KPEN’s station logs were located at its co-owned stations in Homer, Alaska, the designated control point some 75 road miles south. The owner and licensee did produce the station logs well after the inspection and initial request by the agents.
- d. 47 C.F.R. § 73.3526(e)(1): [Contents of the Local Public Inspection File] *Authorization*. “A copy of the current FCC authorization to construct or operate the station as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization. These materials shall be retained until replaced by a new authorization, at which time a copy of the new authorization and any related materials shall be placed in the file.” At the time of the inspection, the agents did not locate a copy of the current authorization.
- e. 47 C.F.R. § 73.3526(e)(2): [Contents of the Local Public Inspection File] *Applications and related materials*. “A copy of any application tendered for filing with the FCC, together with all related material, and copies of Initial Decisions and Final Decision in hearing cases pertaining thereto. If petitions to deny are filed against the application and have been served on the applicant, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition.” FCC records indicate that an application for an engineering Special Temporary Authority was filed on February 13, 2009 and accepted for filing on February 17, 2009. A copy of this application was not located in the public file. In addition, KPEN advised the agents of a filing of petition to deny KPEN’s renewal. At the time of the inspection, the agents did not locate the required statement of such action in the file.
- f. 47 C.F.R. § 73.3526(e)(4): [Contents of the Local Public Inspection File] *Contour Maps*. “A copy of any service contour maps, submitted with any application tendered for filing with the FCC, together with any other information in the application showing service contours and/or main studio and transmitter location (State, county, city, street address, or other identifying information).” At the time of the inspection, the agents did not locate a service contour map submitted with any application tendered for filing. The agents however did find a separately generated coverage map, developed by the licensee appearing to be for their sales or station promotion.
- g. 47 C.F.R. § 73.3526(e)(5): [Contents of the Local Public Inspection File] *Ownership reports and related materials*. “A copy of the most recent, complete ownership report filed with the FCC for the station, together with any statements filed with the

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FCC certifying that the current report is accurate, and together with all related material.” At the time of the inspection, the file did contain an ownership report dated December 10, 2009. The agents did not locate the 2011 biennial ownership report.

3. As the nation’s emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees. We also must investigate violations of other rules that apply to broadcast licensees. Pursuant to Section 403 of the Communications Act of 1934, as amended,³ and Section 1.89 of the Commission’s Rules, we seek additional information concerning the violation and any remedial actions the station may have taken. Therefore, Peninsula Communications Inc., must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁴

4. In accordance with Section 1.16 of the Commission’s Rules, we direct Peninsula Communications Inc., to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Peninsula Communications Inc., with personal knowledge of the representations provided in Peninsula Communications Inc.’s response, verifying the truth and accuracy of the information therein,⁵ and confirming that all of the information requested by this Notice which is in the licensee’s possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁶

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

³ 47 U.S.C. § 403.

⁴ 47 C.F.R. § 1.89(c).

⁵ Section 1.16 of the Commission’s Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

⁶ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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Anchorage Resident Agent Office
PO Box 231949
Anchorage, AK 99523-1949

6. This Notice shall be sent to Peninsula Communications Inc. at their address of record.

7. The Privacy Act of 1974⁷ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance. Any false statement made knowingly and willfully in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁸

FEDERAL COMMUNICATIONS COMMISSION

David J. Charlton
Resident Agent
Anchorage Resident Agent Office
Western Region
Enforcement Bureau

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).

⁸ 18 U.S.C. § 1001 *et seq.*